

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

WENDY R. TUCKER, )  
Plaintiff, )  
v. )  
MICHAEL J. ASTRUE, )  
Commissioner of Social Security, )  
Defendant. )

Civil Action No.: 5:11cv137  
By: Hon. Michael F. Urbanski  
United States District Judge

**ORDER**

This social security disability appeal is before the court for review of the Report and Recommendation issued in this case by the magistrate judge on March 1, 2013, in which it is recommended that this matter be remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration. The Commissioner has filed an objection to the Report and Recommendation pursuant to Federal Rule of Civil Procedure 72(b).

The court has reviewed the magistrate judge's report, the objections to the report, and the pertinent portions of the administrative record and, in so doing, made a de novo determination of those portions of the report to which the Tucker objected. The court finds that the magistrate judge was correct in concluding that the ALJ's determination is not supported by substantial evidence in the record. All of Tucker's treating physicians have diagnosed her with, among other things, fibromyalgia and chronic fatigue syndrome, and have found that she is unable to work given these impairments. As such, the ALJ inappropriately substituted her judgment for that of the treating physicians when concluding that the objective medical evidence did not support the treating physician's medical opinions. See Grimsley v. Astrue, CIV A

1:07CV00763, 2009 WL 737109 (M.D.N.C. Mar. 23, 2009). Additionally, a review of the hearing transcript indicates that the ALJ did not allow Tucker's counsel an adequate opportunity to examine the Vocational Expert. Thus, the court overrules the Commissioner's objection and adopts the magistrate judge's recommendation that this case be remanded to the Commissioner. On remand, the Commissioner is directed to obtain a consultative exam of the claimant by either a rheumatologist or a physical medicine specialist and an additional vocational assessment consistent with the findings from this exam.

It is therefore **ORDERED** and **ADJUDGED** that the plaintiff's motion to award her disability benefits, or in the alternative, to remand,<sup>1</sup> (Dkt. # 15) is **GRANTED in part and DENIED in part**, that the Commissioner's motion for summary judgment (Dkt. # 16) is **DENIED**, that the report and recommendation (Dkt. # 21) is **ADOPTED in its entirety**, that this case will be **REMANDED** to the Commissioner for further consideration consistent herewith pursuant to sentence four of 42 U.S.C. § 405(g), and that this matter is **STRICKEN** from the active docket of the court.

**IT IS SO ORDERED.**

The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered: March 25, 2013

*/s/ Michael F. Urbanski*

Michael F. Urbanski  
United States District Judge

---

<sup>1</sup> Tucker's motion seeks an order awarding her disability benefits or, in the alternative, an order remanding this case for further proceedings consistent with the evidence. The court **DENIES** plaintiff's motion to award her disability benefits.